

**Department of  
Veterans Affairs**

# Memorandum

Date: April 2, 2014

From: Director Advisory Committee Management Office (00AC)

Subj: Decision Document - Status of the Veterans' Advisory Committee on Environmental Hazards (VAIQ# 7460041)

To: Chief of Staff (00A)

## **1. ISSUE:**

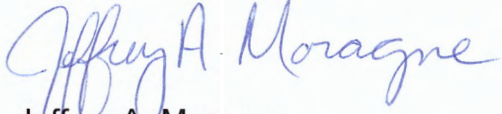
The Federal Advisory Committee Act (FACA), Public Law 98-542 and Veterans' Advisory Committee on Environmental Hazards (VACEH) Charter collectively direct the Department of Veterans Affairs (VA) to accomplish specific goals. The statutory authorities in these laws do not have a sunset clause. The Veterans Benefits Administration (VBA) oversees the VACEH. Based on VBA decisions, the VACEH has not met since November 2011, has an expired Charter and no active committee members. Unfortunately, these management decisions expose the department to litigation, external oversight and loss of the public trust. In order to mitigate these risks, the VACEH operational status must be defined and communicated to stakeholders.

## **2. BACKGROUND:**

According to VBA, VACEH has accomplished its goals, become obsolete given Department of Defense (DoD) advisory committee efforts, and has operational costs which exceed its benefits. VA's Office of General Counsel (OGC) has examined VBA's position, FACA, PL-98-542 and the VACEH's Charter. The OGC concluded that legislation is required to manage VACEH as is or to terminate all together. The OGC recommends requesting the General Services Administration (GSA) provide a policy solution to managing VACEH. The GSA Committee Management Secretariat, which oversees Federal advisory committee management, recommends DVA place the VACEH in "Administratively Inactive Status" (AIS). This status, in effect, terminates a committee without having to enact legislation. Currently, GSA recognizes 50 Federal advisory committees in AIS. The Office of Congressional Affairs (OCA) concurs with this course of action. The Advisory Committee Management Office also concurs with placing the VACEH in AIS as this appears to be the best solution that is sensible, saves administrative costs, and serves the public service interest.

Status of the Veterans' Advisory Committee on Environmental Hazards (VAIQ #7460041)

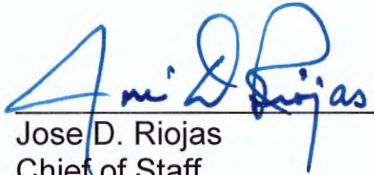
**3. RECOMMENDATION:** Approve placing the VACEH in Administratively Inactive Status.



Jeffrey A. Moragne

**DECISION:**

Approve



Jose D. Riojas  
Chief of Staff

4/3/14  
Date

**ATTACHMENTS:**

- TAB A: VBA white paper on VACEH termination
- TAB B: OGC perspective on VACEH termination
- TAB C: OCLA perspective on VACEH termination
- TAB D: GSA perspective on VACEH termination
- TAB E: VACEH Annual Comprehensive Report 2013
- TAB F: Relevant Statutes
  - 1. Copy of Federal Advisory Committee Act
  - 2. Copy of PL-98-542 (established VACEH)
- TAB G: Relevant Charters:
  - 1. Veterans Advisory Committee on Environmental Hazards
  - 2. Veterans Advisory Board on Dose Reconstruction (i.e., the DoD advisory committee that works to accomplish VACEH goals)

## **VETERANS ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS**

### **2014 ANNUAL ASSESSMENT OF COMMITTEE ACTIVITIES**

#### **Committee Activities**

- The Veterans Advisory Committee on Environmental Hazards (VACEH) is a statutory committee established in accordance with Section 6 of Public Law 98-542, the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, as amended by Section 10 of Public Law 102-4, the Agent Orange Act of 1991. The VACEH is responsible for reviewing the scientific literature relating to adverse health effects that may be associated with exposure to ionizing radiation.

#### **Committee Production**

- The VACEH has not met since November 2009 and has, as a result, not submitted any activity reports nor made any recommendations to the Secretary. The committee charter was renewed for two years on March 25, 2011. The committee is authorized to have 9 members to include 6 scientific members and 3 lay members. Currently all terms of the members have expired.
- Prior to the committee going dormant, the VACEH activities were restricted to reviewing scientific and medical literature related to the potential effects of exposure to ionizing radiation. In FY 2009, VACEH reviewed 145 publications and in FY 2010, 135 publications were reviewed. No recommendations were made to the Secretary as a result of their reviews.
- The Congress and the Secretary have created presumptions of service connection for 21 cancers that have been associated with exposure to ionizing radiation. During its last meetings, the committee was unable to identify any additional conditions that may have a positive association with exposure and were left to only recommend that all cancers be made presumptive. This has not been accepted as many cancers, e.g. prostate and rectal cancers, are not radiogenic.

#### **Program Office's Assessment of Committee's Continued Value**

- The VACEH has been inactive for more than four years. We do not believe there is any justification for renewing committee membership and investing time and funding in paying the costs associated with committee activities. There are currently approximately 658 radiation claims pending with a significant number of them being from Atomic Veterans with presumptive disease and from Veterans who were exposed occupationally while performing military duties.

Veterans Advisory Committee on Environmental Hazards

Recommendation(s)

- VBA considers the termination of the VACEH to be a positive move in that it has completed the mission for which it was created. We appreciate their service to radiation-exposed Veterans. We have the capability within VBA and VHA's Office of Public Health and in association with DoD's Defense Threat Reduction Agency to react to any new scientific or medical information.

Submitted by:

\_\_\_\_\_s\_\_\_\_\_

April 1, 2014

Nick Olmos-Lau, M.D. FAAN

Date

Designated Federal Officer

\_\_\_\_\_s\_\_\_\_\_

April 1, 2014

Bradley Flohr

Date

Senior Advisor

Compensation Service

## OGC

With respect to the Environmental Hazards committee, the best option may be to make the committee “***Administratively Inactive***” for 2013 as Ken suggests below, especially given the time constraints (Ken wants this resolved today).

At this point, I don't have enough information to advise whether terminating the committee would even be authorized/possible. As you know, it's a statutory committee and the statutory authority does not have a sunset provision. Unless Congress amends the law to provide for a termination date, the authority for the committee will continue. The FACA regulations seem to contemplate that a statutory committee *could* be terminated even if there is no sunset provision *if* termination is implied by operation of the statute. I could envision that happening in some circumstances. For example, if a statute created a committee to provide advice regarding program X, and program X is authorized for 3 years only, then there's a reasonable argument to make that the committee could be terminated when the program ends. At that point, the work of the committee has been completed; there is literally nothing left for the committee to do.

Without knowing more about the Environmental Hazards committee, I can't evaluate whether that type of situation exists, although based on the statute alone, I doubt that it does. One duty of the Scientific Council of the Environmental Hazards committee is to provide periodic reports that include findings and evaluations of scientific studies on the health effects of exposure to ionizing radiation. I imagine the need for that type of guidance is ongoing. Going forward, it would be helpful to have a discussion with the DFO/program office to learn more.

## OCLA

On March 12th, 2014, a meeting was held to discuss the status of the Environmental Hazards Advisory Committee. In attendance were Bonnie Miranda (ExecSec), Brad Flohr (VBA), Jeff "Boomer" Moragne (the new director of the Advisory Committee Management Office), Jessica Tanner (OGC) and Lesia Mandzia (OCLA).

At that meeting, it was decided that Mr. Flohr would put together a white paper for Ms. Miranda explaining why the committee should be terminated, and that Ms. Miranda would present a decision package for COSVA. Based on COSVA input, VA would either proceed with terminating the committee or other action as directed.

Mr. Moragne has requested OCLA's perspective on terminating the Environmental Hazards Advisory Committee. This information would be included in the decision package to COSVA.

The Environmental Hazards Advisory Committee, which is an authorized committee, is responsible for providing advice to the Secretary on health effects of ionizing radiation, regulatory standards and guidelines to promote uniformity of adjudication and compensation to Veterans, exposed to atmospheric testing of nuclear weapons, or occupation of Hiroshima and Nagasaki, Japan. The activities of this Committee have been restricted to reviewing scientific-medical literature related to ionizing radiation.

Based on the fact that:

- the Committee has been inactive for two years;
- the Committee has issued no recommendations in two years;
- the terms of all of the members have expired;
- Compensation and Pension Service considers that termination of this Committee would be a positive move in that the Committee no longer serves a practical purpose and has completed its work; and
- OCLA has not received any congressional inquiries regarding this Committee and its work

OCLA agrees that the Committee should be terminated.

## **General Service Administration Advisory Committee Secretariat**

In order to terminate a statutory committee, it must meet the requirements of Section 102-3.30 (b)(6) of the FACA Final Rule: **§102-3.30**

(b) Termination. An advisory committee must be terminated when:

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

If the committee's authorizing statute has an explicit termination or "implied" expiration time by "operation of the statute" it is recommended that your legal counsel provide their concurrence to terminate the committee. The concurrence document (e-mail is fine) from your legal counsel or a statement from you as CMO stating legal counsel has reviewed and agrees with the termination, should be submitted to GSA CMS. The next step is for the CMO to create a "Termination" consult in the FACA database.

If the statute does not have termination language and the committee is no longer active, you should, with legal counsel concurrence, consider changing the committee status to **"Administratively Inactive"**. If the decision is made to change the status, submitting the written concurrence is highly recommended. A consult in the FACA database will be required (as an example, see consult # 11 for the Veterans' Advisory Committee on Environmental Hazards, CID 1352).

Currently, in FY 2014, government-wide there are **"50 Administratively Inactive"** Committees. This information may be retrieved by:

1. Going to [www.facadatabase.gov](http://www.facadatabase.gov)
2. Selecting "Agencies"
3. Clicking on "Government-wide Reports"

Is there a specific committee you are considering to terminate?